IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

WP(C).No. 34033 of 2006(B)

OPELE.10/2005 of MUNSIFF COURT,VARKALA

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PETITIONER:

INDIRA.D.,
W/O. SUJATHAN,
MAVILA VEEDU,
THACHANKONAM,
VARKALA.

BY ADV. SRI.R.ANILKUMAR
SRI.P.BANI

RESPONDENT:

P.S.VINAYAKUMARI,
D/O. PUSHKARAN,
PUTHENVILA VEEDU,
THACHANKONAM, VARKALA,
THIRUVANANTHAPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.34033 OF 2006

DATED THIS THE 20th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the successful candidate in the election conducted on 24.9.05 for Ward No.16 of Varkala Municipality. Respondent filed an election petition before Munsiff Court, Varkala to set aside the election of petition on the ground of double voting. Respondent filed Ext.P3 application to amend the election petition incorporating the details of persons, who committed double voting. Respondent, in the election petition itself furnished the details and challenged the election on the ground of double voting. Petitioner filed Ext.P2 objection contending that election petition cannot be amended as sought for. Under Ext.P5 order, learned Munsiff allowed the application. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Arguments of learned Counsel appearing for petitioner relying on the decision of the Apex Court in **Sethi Roop Lal Vs. Malti Thapar (Mrs) and Others (1994(2)SCC 579)** was that respondent is not entitled to amend the election petition except the plea regarding corrupt practice as provided under Section 169(4) of Municipalities Act. It was vehemently argued by learned Counsel appearing for petitioner

that as the amendment was sought for not in respect of corrupt practice, respondent is not entitled to get the election petition amended and therefore Ext.P5 order is to be quashed.

3. On hearing learned Counsel appearing for petitioner I cannot agree with the submission. Section 86(5) of Representation of People's Act was considered by the Apex Court in **Sethi Roop Lal's** (Supra) case. That was a case,where amendment was sought for in respect of allegations on corrupt practices. Section 86(5) of Representation of People's Act is in para materia with Section 169(4) of Municipalities Act. Sub Section 4 of Section 169 provides that Court may upon such terms as to cause and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner, as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition, which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.

4. Sub Section 1 of Section 170 provides that subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure to the trial of the suits.

5. When Section 170(1) provides that an election petition is to be tried subject to the provisions of Municipalities Act and Rules

made thereunder, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, it gives no room for doubt that Court has the power provided under order VI Rule 17 of Code of Civil Procedure to permit the parties to amend the pleading. The only restriction provided is under Sub Section 4 and that relates to the pleading on corrupt practice. That exactly was the question considered by the Apex Court in **Sethi Roop Lal's** case. Their Lordships held:

> "The fasciculus of sections appearing in Chapter III of Part VI of the Act lays down the procedure for trial of election petitions. Sub-section (1) of Section 87 thereof provides that subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the high Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure ('Code' for short). That necessarily means that Order Vi Rule 17 of the Code which relates to amendment of pleadings will afortiori apply to election petitions subject, however, to the provisions of the Act and of any rules made thereunder. Under Order VI Rule 17 of the Code the Court has the power to allow parties to the proceedings to alter or amend their pleadings in such manner and on such terms as may be just and it provides that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. But exercise of such general powers stands curtailed by Section 86(5) of the Act, when amendment is sought for in respect of any election petition based on corrupt practice. Since Section 87 of the Act -- and, for that matter, Order VI Rule 17 of the Code -- is subject to the provisions of the Act, which necessarily includes Section 86(5), the general power of amendment under the former must yield to the restrictions imposed by the latter."

6. In the light of the law declared by the Apex court, arguments of learned Counsel appearing for petitioner that the Court

is competent to grand permission to amend the election petition only with regard to the corrupt practice and not the pleading on double voting cannot be accepted. The Court has power under order VI Rule 17 of Code of Civil Procedure to grand permission to amend an election petition. But when the amendment sought for, relates to corrupt practices, the said power could be exercised only subject to the restrictions imposed under Sub Section 4 to Section 169. The amendment sought for is not in respect of the corrupt practices and therefore that restriction does not apply.

Learned Munsiff has exercised the discretion vested in him. I do not find any reason to interfere with that discretion in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

Petition dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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